Petition

FILED
APR 13 1982
ALEXANDER L. STEVAS

RECEIVED
MAR 18 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

81-1890

OCTOBER TERM XXXX
1981

No_____

81-2456
U. S. Ca, 10th Cir.
(DC 79-1354, Alcorta)

RAY BECKMAN, Plaintiff Appellant
And CLARENCE J. HELGE, a class
member and others of the class
vs
~~BERNICE HOLMES NORTON, THE E.E.O.C.~~
and others as agents of the
UNITED STATES, Defendants

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SUPREME COURT, U.S.

Comes now Ray Beckman, in accordance with (Rule 47 of this Court, as amended to 1980 (6) Rule 54 of this Court, as amended to 1964, and herewith moves:

MOTION TO PROCEED AS VETERAN

I, Ray Beckman, hereby ask leave of the Court to proceed as a veteran, under Sec. 9(d) of the Universal Military and Service Act, as amended, (50 USC App. 459 (d) or other similar provisions of law applicable to veterans.

Ray Beckman
Ray Beckman

AFFIDAVIT

I, Ray Beckman, do hereby certify that in November 1942, I was summoned to the Post Office in Hoxie, Kansas, given forms by the Postmistress, Ila Menafee, for the purpose of completing my appointment as Rural Mail Carrier, Hoxie, Ks. and did have same completed in all respects, by having a Dr.R.Thompson physicaly examine me and record same on the forms, along with a Dr.Vermillion, take the Drivers Exam, all of which I paid for by my check, return these forms to Mrs. Menafee, who administered the oath of appointment, signed this and all other necessary forms, completing the appointment, to the best of my knowledge and belief, and that; I,did upon discharge from the army in Nov. 1945, under the date of 12-5-1945 apply for re-employment in the position as an honorably discharged veteran and later did furnish all the evidence as requested by the U. S. Post Office; further that prejudice, bias and discrimination, starting from that time and continuing to this time necessitates this action, to reverse that,wherein a non-veteran,S. Percival, and not one of the 3 highest eligibles was extended,preference over a veteran.

Ray Beckman
Ray Beckman

RECEIVED
APR 13 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 81-1890

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981.

Ray Beckman,

Petitioner,

v.

[redacted] and others as agents of the United States,

Respondent.

Petition For Writ of Certiorari To The United States Court Of Appeals For The Tenth Circuit

Ray Beckman

Ray Beckman, Petitioner.

QUESTION PRESENTED FOR REVIEW

1. Shall the members of this class be allowed relief from discrimination against their class and be made whole in the matter.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-1890

RAY BECKMAN

PETITIONER

V.

Eleanor Holmes Norton, E.E.O.C. et al, U. S. Postal Service, as AGENTS AND AGENCIES OF UNITED STATES,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner, Ray Beckman, respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Tenth Circuit entered on 6 March, 1982.

OPINION BELOW

The Court of Appeals entered its memorandum decision affirming the denial of Petitioner's motion to expand the question by the enlarged docketing statement and to get to the question of discrimination and reverse same with order to the United States District court District of Kansas. A copy of the memorandum is attached as Appendix A.

JURISDICTION

On 6 March 1982 the Court of Appeals entered judgment affirming the denial of petitioner's motion by the US District Court , to address the matter of discrimination for this petitioner and members of his class

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V;

> Nor shall any person...be deprived of life, liberty, or property, without due process of law....

STATEMENT OF THE CASE

On 6 March 1981, a panel of the Tenth Circuit Court of Appeals affirmed the decision of the United States District Court, District of Kansas, which had tuned out the matter of discrimination which had been the original purpose of the requested Writ of Mandamus requested, the Tenth Circuit Court of Appeals in turn did not consider the matter of discrimination as presented in the broadened docketing statements presented to it. The original and appellate Courts merely turned to argue a single issue law 79-577 as it applied to Ray Beckman, without any consideration of the fact that the matter of discrimination, when remedied, makes the arguments used moot and shows that Ray Beckman of this class had mature rights in November 1942. Discrimination is the essence of the matter.

REASON FOR GRANTING THE WRIT

Where petitioner, and his class has suifered discrimination due process demands that they be made whole in their rights.

In 78-0996, US District Court, Washington, D. C., Otha Miller, vs. Sec, J. Sterdoller, the Court established the rule that in discrimination against a class the members of the class shall be made whole. This case parallels the matters in that the matters cited extend from 1940 and are many and verifiable and had a constant rebuffing of appeals filed. The matters have now arrived where USC 7702, Sec 717 of the Civil Rights Act of 1964, was amended by the EEO Act of 1972 to make the Agencies subject to suit in U. S. Courts, after an issue is appealed to the agency. When Petitioner's appeal and Mr. Hedge's appeal were finalized in July 1979 the matters of Discrimination became apparent when the actions taken were compared and found to be exactly opposite. By any of the criteria used whether they were the first approached, or the first with completed forms by the applicants and appointing officers (Coutos V US 552 F 2d 922 (Ct Claims 1976) Beckman & Hedge were there first.

-2-

1 Mr Berzak used this criteria as Bar USCSC 1976.

Mr. Jenkins, of the Board of Governors, U. S. Postal Service in a forthright statement, printed in the U. S. Postal Life of Nov-Dec. 1981, stated that there are many such cases which have been dragged on for years and need to be heard and disposed of with dispatch. We could no more than cite Mr. Jenkins article "Time To Learn" to support our argument that the time has arrived to redress the cases of prejudice and bias.

Further, it has been ruled that the burden of proof has shifted in these cases, as per U. S. Court of Appeals, Sixth Circuit, 1976 Employee v. Veterans Hosp. Brecksville, Ohio, wherein the rule as established therein is; agencies bear proof of burden on discrimination.. It may here be argued that the many, many, "allegations" filed from the years 1940 to date become facts which in any hearing must be shown not to be as alleged and cannot be dismissed out of hand.

Conclusions

For the foregoing reasons, Petitioner, Ray Beckman, respectfully requests that a writ of certiorari issue to review the judgment of the United States District Court of Appeals for the Tenth Circuit.

Respectfully submitted,

Dated this 10th April, 1982.

Ray Beckman

Ray Beckman
Box 313, Hoxie, Ks. 67740

This is to certify that on the 10th day of April 1982, I mailed copies of this petition to: Jim J. Marquez, U. S. Attorney, Box 2757, Wichita, Ks. 67201; A. Johnson, Clerk, U. S. District Court, 401 N. Market, Room 204, Wichita, Ks. 67202; Solicitor General, Dept. of Justice, Washington, D. C.; Original to Supreme Court of the United States, Washington, D. C.

Ray Beckman

Ray Beckman, Box 313
Hoxie, Ks. 67740

Appendix

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit
MAR 08 1982
HOWARD K. PHILLIPS
Clerk

RAY BECKMAN,

Plaintiff-Appellant,

CLARENCE C. HEDGE,

Plaintiff,

v.

ELEANOR HOLMES NORTON and the EEOC, RUTH PROKOP, Ch., MSPB, PATRICK SWYGERT, Chief of the Office of General Counsel as Agents of the United States and others unknown,

Defendants,

UNITED STATES POSTAL SERVICE,

Defendant-Appellee.

No. 81-2456

Appeal from the United States District Court
For the District of Kansas
(D. C. No. 79-1354)

Submitted on the briefs pursuant to Tenth Circuit Rule 9:

Ray Beckman, pro se.

Jim J. Marquez, United States Attorney, and Stephen K. Jester, Assistant United States Attorney, Wichita, Kansas; Stephen E. Ralph, Associate General Counsel, United States Postal Service, Washington, D.C.; and Gregg P. Jacklitsch, Labor Assistant Regional Labor Counsel, United States Postal Service, Chicago, Illinois, for Defendant-Appellee.

Before BARRETT, McKAY and LOGAN, Circuit Judges.

PER CURIAM.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed.R.App.P. 34(a); Tenth Circuit R. 10(e). The cause is therefore ordered submitted without oral argument.

This is an appeal from an order of the district court granting the motion for summary judgment of the United States Postal Service.

In his complaint, appellant alleged that he was entitled to have his seniority status recomputed and to an award of back pay pursuant to the provisions of Public Law 79-377, 5 U.S.C. § 645a(a) (1964 Ed.). This provision provided, in essence, that an individual who lost an opportunity for employment with the Post Office Department due to active military service during World War II was entitled, upon being subsequently hired by the Post Office Department, to a rate of compensation and seniority status as if the individual's military service had not intervened in his appointment to the position.

Briefly, the undisputed facts disclose that appellant applied for a rural carrier position in Hoxie, Kansas in 1942. Appellant received a test score of "97" placing him number one on the Rural Carrier Registry at Hoxie. Thereafter, [illegible] entered the military service and another individual, Sylvan Percival, was appointed to the carrier position at Hoxie. The rural mail carrier position in Hoxie became vacant in 1967 upon

Mr. Percival's retirement and on December 20, 1967, appellant was appointed to that position. Appellant argues that under the aforementioned statute, he is entitled to vicariously assume the seniority status and rate of pay which Mr. Percival held at retirement.

Public Law 79-577, 60 Stat. 749, as amended by Public Law 81-492, 64 Stat. 93, codified at 5 U.S.C. § 645a(a) (1964 Ed.) provided, in relevant part:

> Any person--
>
> (1) whose name appeared on any list of eligibles . . . (B) at any time between May 1, 1940, and October 23, 1943, with respect to a position in the field service of the Post Office Department; . . . and
>
> (2) who, . . . lost opportunity for probational appointment because of military service during World War II, was certified for probational appointment to such position, and subsequently, was given such appointment, shall, for the purpose of (A) determining his rate of compensation and (B) his seniority rights in the postal field service, be held to have been appointed to such position as of the earliest date on which an eligible standing lower on the list of eligibles received a probational appointment therefrom. (Emphasis added).

Public Law 79-577 was repealed effective September 6, 1966 by Public Law 89-554, 80 Stat. 378. However, § 8(a) of Public Law 89-554 is a savings clause which provides:

> The laws specified in the following schedule are repealed except with respect to rights and duties which matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act . . . . (Emphasis added).

In granting summary judgment, the district court determined that the appellant's rights under Public Law 79-577 had not matured until after the repeal of that statute. We concur in the district court's conclusion.

The assumption of the seniority status and rate of pay of another as authorized by Public Law 79-577, was expressly conditioned upon the subsequent individual being "certified for probational appointment to such position, and subsequently, was given such appointment . . . ." Appellant was not actually given the carrier appointment until after September 6, 1966, the date Public Law 79-577 was repealed. Accordingly, appellant's rights under 79-577 had not matured and could not come within the savings clause provisions of § 8(a) of Public Law 89-554.

The order granting summary judgment is affirmed.

AFFIRMED. The mandate shall issue forthwith.

FILED

MAR 10 1982

ARTHUR G. [illegible] Clerk

By [illegible] Deputy

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MARCH TERM - March 8, 1982

Before Honorable James E. Barrett, Honorable Monroe G. McKay, and Honorable James K. Logan, Circuit Judges

RAY BECHMAN,

Plaintiff-Appellant,

CLARENCE J. HEDGE

Plaintiff,

vs.

ELEANOR HOLMES NORTON and the E.E.O.C., RUTH PROKOP, Ch., MSPB, PATRICK SUGGERT, Chief of the Office of General Counsel as Agents of the United States and others unknown,

Defendants,

UNITED STATES POSTAL SERVICE,

Defendant-Appellee.

JUDGMENT

No. 81-2156

(D.C. No. 79-1356-B)

A true copy

Teste:

[illegible]
Clerk of Court
Appellate Circuit

By Opal N. Carter
Deputy Clerk

Upon consideration of the record on appeal and the files of this Court, it is ordered that the judgment of the United States District Court for the District of Kansas on the court's conclusion is affirmed pursuant to rule [illegible] of the rules of this Court. The mandate shall issue forthwith.

[illegible]

A true copy

ATTEST: WILLIAM E. JOHNSON, Clerk

By [illegible]

Appendix A 5

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UNITED STATES CIVIL SERVICE COMMISSION
APPEALS REVIEW BOARD
Washington, D. C. 20415

RECEIVED
APR 15 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

DECISION

IN THE MATTER OF

RAYMOND R. BECKMAN

TYPE CASE: DISCRIMINATION: REPRISAL

BEFORE: Member Roel--Reverse/Return
Member Tillman--Reverse/Return
Member Valadez--Reverse/Return
By Unanimous Decision--Reverse/Return

INTRODUCTION

The above named complainant appealed from the April 3, 1978 decision of the United States Postal Service concerning his complaint of reprisal for filing previous complaints of discrimination.

STATEMENT OF THE CASE

The record shows that complainant is employed by the Postal Service as a Rural Carrier, PS-5, in Horton, Kansas. By letter to the EEO Officer in Topeka, Kansas, dated June 2, 1977, complainant alleged that he had been subjected to continuing discrimination and reprisal for filing previous complaints on the basis of religion and age. Complainant then forwarded his complaint to the agency's Regional Director of Employee and Labor Relations, stating that the EEO Officer had advised him to file his complaint with that office since it concerned reprisal.

The agency assigned the case to an EEO Investigator, who submitted a report on October 11, 1977.

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AGENCY DECISION

By letter dated April 3, 1978, the agency's Regional Director of Employee and Labor Relations issued a decision finding no discrimination based on religion, age, or due to complainant's filing of previous EEO complaints. This decision also informed the complainant that he had a right of appeal to the Board.

REPRESENTATIONS TO THE APPEALS REVIEW BOARD

By letter dated April 5, 1978, complainant appealed to the Board and indicated that he disagreed with the agency decision.

ANALYSIS AND FINDINGS

Section 713.262 of the Civil Service regulations provides that an employee or applicant has a choice of procedures for the review of an allegation of reprisal. Section 713.262(a) provides that such an allegation may be processed as an individual complaint of discrimination subject to sections 713.211 to 713.222 of the Civil Service regulations. Section 713.262(b) of the Civil Service regulations provides that such an allegation may be processed as a charge of reprisal, subject to an abbreviated review procedure. While the record clearly shows that the agency processed complainant's allegation as a charge of reprisal, there is no evidence that complainant ever elected to have his allegation processed in that manner.

Complainant's letters of June 2, 1977 and June 13, 1977, contain no references to charges of reprisal; both use the term complaint. The agency's letter of September 7, 1977, informing complainant of the assignment of an EEO Investigator, also refers to his allegation as a complaint. In addition, the final agency decision informed complainant that he had a right to appeal to the Board, which would not be the case for a charge of reprisal. The proper procedure for the agency to have followed, if there was any doubt as to whether complainant was filing a charge of reprisal or a complaint, would have been to advise complainant of the differences in the two procedures and require that he make a choice. The record before the Board contains no evidence that complainant was ever advised of the differences in the two procedures. In the absence of any evidence that complainant wished to file a charge of reprisal to be processed under 713.262(b), the Board must reverse the agency decision and return the case to be processed as a discrimination complaint.

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Furthermore, regardless of whether complainant filed a charge of reprisal or a complaint, the agency's investigation of his allegations was woefully inadequate. While complainant's allegations were somewhat vague, perhaps due to the failure of the agency to refer him to an EEO counselor, the agency made no attempt to clarify the matter. The agency did investigate a number of disciplinary actions, including a May 31, 1977 letter of warning, and an action placing complainant in a leave-without-pay status for five days from October 26 to 30, 1976. However, the documentation provided in the investigative report does not disclose the circumstances of either incident. In addition, the affidavits of complainant and the Postmaster were less than one page long, and did not provide any information about the circumstances underlying the actions at issue. Therefore, the agency is directed to assign the case a new investigator to develop an adequate record.

DECISION

In view of the foregoing, the Appeals Review Board hereby reverses the final agency decision of April 3, 1978, and returns the case for processing as a complaint of discrimination under part 713.

The decision of the Board is final and there is no further right of administrative appeal. This means that the decision of the Board constitutes the exhaustion of those adminstrative remedies which must precede judicial review. If the complainant is not satisfied with this decision, he is authorized by the Equal Employment Opportunity Act of 1972 (section 717(c) of the Civil Rights Act of 1964, as amended) and by section 15 of the Age Discrimination in Employment Act of 1967, as amended April 8, 1974, (29 USC 633a) to file a civil action in an appropriate U.S. District Court. Under the EEO Act of 1972, civil actions must be filed within 30 calendar days of the receipt of this decision.

For the Board:

Cameron C. Smith

Cameron C. Smith, Acting Director
Office of Appeals Review

This signature is executed pursuant to the delegation from the EEOC to the MSPB appearing in the Federal Register on April 3, 1979, and the internal delegation from the Chair of MSPB to the Acting Director, Office of Appeals Review.

0 5 JUL 1979

APPENDIX A 8

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

RAYMOND R. BECKMAN,

Plaintiff,

vs.

UNITED STATES POSTAL SERVICE,

Defendant.

Civil Action

No. 79-1354

FILED

OCT 15 1981

ARTHUR G. JOHNSON, Clerk

By _____ Deputy

MEMORANDUM AND ORDER

Plaintiff brings this action against his employer to establish his right to seniority and back pay under certain statutes enacted to benefit employees in the postal field service who lost appointment opportunities because of service in the Armed Forces during World War II. After the defendant Postal Service denied plaintiff's right to retroactive seniority credit and back pay, plaintiff followed the administrative appeals procedure, appealing unsuccessfully to the Federal Employee Appeals Authority of the Civil Service Commission, now reorganized as the Office of Appeals Operations of the Merit Systems Protection Board. Plaintiff's request to reopen and reconsider that adverse decision was denied by the Appeals Review Board, now the Office of Appeals Review, and this action followed the exhaustion of administrative remedies. The matter is presently before the Court on cross-motions for summary judgment.

The statute upon which plaintiff relies is Public Law 79-577, 60 Stat. 749, as amended by Public Law 81-492, 64 Stat. 93, codified at 5 U.S.C. § 645a(a) (1964 Ed.), which states in pertinent part:

> Any person--
> (1) whose name appeared on any list of eligibles . . . (B) at any time between May 1, 1940, and October 23, 1943, with respect to a position in the field service of the Post Office Department; . . . and

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> (2) who, pursuant to Executive Order Numbered 9538, dated April 13, 1945, or regulations of the Civil Service Commission covering similar situations in which an eligible lost opportunity for probational appointment because of military service during World War II, was certified for probational appointment to such position, and subsequently, was given such appointment, shall, for the purpose of (A) determining his rate of compensation and (B) his seniority rights in the postal field service, be held to have been appointed to such position as of the earliest date on which an eligible standing lower on the same list of eligibles received a probational appointment therefrom: Provided, That the grade, time in grade, and rate of compensation of any person so appointed to a position in the postal field service shall, at the time this section and section 645b of this title first applies to such person, be not less than the grade, time in grade, and rate of compensation of the lower eligible (whether a substitute or regular employee) receiving the highest automatic rate of compensation at such time, but such adjustment in grade, time in grade, and rate of compensation shall not affect the status of such person as a substitute or regular employee: Provided, however, That no regular employee in the postal field service shall be reduced to substitute status by reason of the enactment of this section and section 645b of this title. * * * *

On September 6, 1966, Public Law 89-554, 80 Stat. 378, repealed Public Law 79-577 as amended. However, Section 8(a) of Public Law 89-554 provided:

> The laws specified in the following schedule are repealed except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act and except as provided by section 7 of this Act.

Section 7 of the Act is not applicable here. As plaintiff recognizes in his brief, the critical question is whether plaintiff had rights under Public Law 79-577 which had matured before that statute was repealed on September 6, 1966.

The facts of this case are not in dispute. On May 2, 1942, plaintiff took the rural carrier examination in the course of applying for a rural carrier position in Hoxie, Kansas. He received a rating of 97 on the examination and his name was placed number one on the register of certified eligibles for appointment to the position as of February 26, 1943. Thereafter plaintiff was inducted into the military service and served on

active duty in World War II until 1945. On April 5, 1943, Sylvan Percival, another applicant for the rural carrier position whose name appeared lower than plaintiff's on the register of certified eligibles, was appointed to the position in Hoxie, Kansas. Within ninety days of his military discharge on November 16, 1945, plaintiff reapplied for the rural mail carrier position in Hoxie. Percival retired from the postal service on May 31, 1967, and on December 30, 1967, plaintiff was reassigned to fill the rural carrier vacancy at Hoxie from his position as a distribution clerk in the Salina, Kansas post office. Plaintiff started in the position at Hoxie at the grade and salary level of Step One; in this action he claims entitlement to credit in grade, time in grade, and rate of compensation equal to those given to Sylvan Percival since Percival's appointment on April 5, 1943, and credit at the highest automatic increases available from and after Percival's retirement on May 31, 1967.

Plaintiff contends that he had rights to the veterans' benefits under Public Law 79-577 which matured upon his reapplication for employment following his discharge for military service, that is, prior to the effective date of the repealing legislation. The problem with this contention is that it rewrites the third condition which must be fulfilled before rights accrue. The statute, in addition to requiring that a person's name appear on a list of eligibles within the stated period and that such person be certified for probational appointment, requires that he actaully have been given an appointment, not merely that he has applied or reapplied for it. The fact is that plaintiff was not appointed to the position at Hoxie until almost sixteen months after Public Law 79-577 had been repealed. Plaintiff states that he had inchoate rights which matured prior to the repeal and were subject only to his subsequent appointment to the Hoxie position. But that statement can be accurately reworded to allege that plaintiff's rights

matured before, and subject to, the occurrence of the last condition required for their maturity. As the restatement demonstrates, that contention is untenable. Inchoate rights, whose maturity depends upon a certain condition being fulfilled, do not mature before that condition is met. The rights plaintiff claims never matured as to him, because by the time of his appointment, which was the last condition to be met before he was entitled to any rights, the statute creating those rights had been repealed. As Professor Sands writes in Vol. 1A of Sutherland Statutory Construction (4th Ed.) § 23.39, p. 290:

> Where a saving clause is appended to an act which by express declaration or by necessary implication repeals another enactment, the law repealed is continued in force as to existing rights and pending actions in accordance with the terms of the saving clause. The saving clause within the repealing statute relates to accrued rights and pending proceedings. Thus, where the right in controversy has not accrued prior to the repeal, a saving clause cannot preserve the repealed statute until the right is required, nor can it operate to hasten the acquisition of the right or cause of action. The right is lost upon the repeal of the statute irrespective of the saving clause . . . . (Footnotes omitted).

Because of the Court's holding that plaintiff had no rights under Public Law 79-977 which matured before the repeal of that statute, it is clear that plaintiff is entitled to no recovery thereunder. Consequently, it is unnecessary for us to consider the other points raised by the parties in their briefs. The file documents in this case show that there is no genuine issue as to any material fact and that defendant is entitled to a judgment as a matter of law. Rule 56, F.R.Civ.P.

IT IS THEREFORE ORDERED that defendant's motion for summary judgment be, and hereby is, GRANTED, and that plaintiff's motion for summary judgment be, and hereby is, DENIED. The Clerk is directed to enter Judgment in favor of the defendant, and against the plaintiff.

At Wichita, Kansas this 15th day of October, 1981.

Dale E. Brown
United States District Senior Judge

United States District Court

FOR THE
DISTRICT OF KANSAS

CIVIL ACTION FILE NO. 79-1354

RAYMOND R. BECKMAN

vs.

UNITED STATES POSTAL SERVICE

JUDGMENT

This action came before the Court, Honorable Wesley E. Brown, Senior Judge, United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered.

It is Ordered and Adjudged that Judgment be entered in favor of the defendant, United States Postal Service, and against the plaintiff, Raymond R. Beckman.

Dated at Wichita, Kansas, this 15th day of October, 19 81.

ARTHUR G. JOHNSON
Clerk of Court

By: S. Morris
S. Morris, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

RAYMOND R. BECKMAN,

Plaintiff,

vs.

UNITED STATES POSTAL SERVICE,

Defendant.

Civil Action

No. 79-1956

FILED

NOV 10 1981

ARTHUR G. JOHNSON

By D. Morris Deputy

ORDER

On October 15, 1981, the Court granted defendant's motion for summary judgment in this case, finding that plaintiff was entitled to no recovery under Public Law 79-577, which was repealed before plaintiff acquired any rights thereunder. Judgment was entered in favor of the defendant, and plaintiff has now filed a motion for reconsideration, to which the defendant has responded.

Plaintiff first invites our attention to Section 7(f) of the repealing legislation, Public Law 89-554. As we stated in the Memorandum and Order of October 15, 1981, Section 7 does not apply to this case. Second, plaintiff states that he completed his last act for employment, and therefore met the last condition required for the acquisition of rights under Public Law 79-577 before its repeal. In support of this proposition, plaintiff cites Goutos v. United States, 552 F.2d 922 (Ct. Cl. 1976). The Court has previously considered and refuted plaintiff's contention. It is not the last act of plaintiff which is required, but the last act of " . . . the person or body vested with the appointment power . . . " which is critical in this case. Goutos, supra, at 925. In short, as we wrote in the Memorandum and Order granting summary judgment for defendant, it is the actual appointment which must be given before rights under the statute accrue; the condition is not satisfied by plaintiff's completion of and signature on an application form.

The motion of the plaintiff for reconsideration is granted. Having reconsidered our Memorandum and Order of October 15, 1981, together with the parties' briefs on the present motion, the Court is convinced that said Memorandum and Order was correct in all respects, that it should therefore be, and is hereby reaffirmed, and that plaintiff is entitled to no relief.

IT IS SO ORDERED.

At Wichita, Kansas this 10th day of November, 1981.

Senior United States District Judge